requires 150 hours of CME during each three-year period, including a minimum of sixty hours of Category 1-A or 1-B coursework approved by the American Osteopathic Association (AOA). Category 1-A consists of formal education programs sponsored by recognized osteopathic institutions which meet the definition of "osteopathic" CME; Category 1-B allows credit for alternative projects such as preparing scientific papers and publications, engaging in osteopathic medical teaching, and conducting osteopathic hospital inspections. Board members discussed the possibility of allowing an osteopath to fulfill the required minimum sixty hours of AOA-approved credit hours with American Medical Association (AMA)-approved credit hours.

OMBC decided to contact both AOA and AMA to seek their input before initiating rulemaking to modify its CME regulations, and thus took no action on this issue.

OMBC Budget Cut. As a result of the ongoing fiscal crisis in California, OMBC recently suffered a 10% cut in its operating budget and a loss of excess funds accumulated in its reserve account. The 10% cut amounts to an approximate $53,000 reduction in the Board's 1992–93 budget. At its December meeting, the Board expressed concern that the budget reduction would cause OMBC to run out of money as early as March 1993, and noted that the cut would undoubtedly affect the Board's ability to engage in enforcement and disciplinary activities. However, Board members also noted that AB 2743 (Frazee) (Chapter 1289, Statutes of 1992) authorizes OMBC in disciplinary proceedings to request the administrative law judge to direct the licentiate, in certain circumstances, to reimburse OMBC for its reasonable costs of the investigation and prosecution of the case. *[12:4 CRLR 225]* This "cost recovery" mechanism may provide some revenue enhancement for OMBC.

Also at the December meeting, the Board discussed the possibility of raising its licensing fees to increase its reserves; however, Executive Director Linda Bergmann and Deputy Attorney General Alan Mangels pointed out that such action would be futile, since the new budget restrictions would not allow OMBC to spend any additional money accumulated in its reserve account and any such increase in fees would probably be transferred into the state's general fund. OMBC is expected to discuss other possible solutions to its budget problems at its next meeting.

■ LEGISLATION

Anticipated Legislation. During the 1993–94 legislative session, OMBC may seek an amendment to Business and Professions Code section 2154(a), relating to requirements for the issuance of a license based on reciprocity. Existing section 2154 requires OMBC to issue an osteopathic physician's certificate based upon reciprocity to an applicant if (among other things) the applicant holds an unlimited license to engage in the practice of osteopathic medicine in another state whose written licensing examination is recognized and approved by OMBC as equivalent to California's exam requirements. For this purpose, the Board may recognize and approve as equivalent an examination prepared by the Federation of State Medical Boards (FSMB) if an applicant has been licensed in another state as a result of the successful completion, prior to December 31, 1993, of that examination. In lieu of such an approved and recognized state examination, OMBC may require the applicant to successfully complete a special examination in general medicine and osteopathic principles as prepared by OMBC or the National Board of Osteopathic Medical Examiners (NBOME). OMBC's proposed amendments to section 2154(a) would provide that, in lieu of a Board-recognized and approved state written license examination, OMBC may also utilize a special purpose examination prepared by FSMB. OMBC may incorporate this proposal into a bill sponsored by Osteopathic Physicians and Surgeons of California.

■ RECENT MEETINGS

At its December 12 meeting, OMBC reviewed a draft of a new format of its Application for Physician's and Surgeon's Certificate. The Board approved the draft, but expressed concern that the format may still not be specific enough in requiring the disclosure of any pending investigations or inquiries into the applicant's professional conduct.

At the same meeting, OMBC again considered adopting guidelines to prevent the transmission of the human immunodeficiency virus (HIV) and hepatitis B virus (HBV) between an osteopath and a patient. At its February 1992 meeting, the Board had reviewed the policy statement prepared by the FSMB and decided to further study that statement and discuss possible modifications. *[12:2&3 CRLR 257]* At its December meeting, it appeared that OMBC would adopt the FSMB policy guidelines; however, the Board tabled the proposal for consideration at its next meeting. The Board is also expected to discuss the methods for communicating the guidelines to DOs.

Also at its December meeting, Deputy Attorney General Alan Mangels presented a report regarding the possible impact on OMBC of the federal Americans with Disabilities Act (ADA), which took effect in January 1992. The ADA is a comprehensive civil rights measure protecting people with disabilities; it was patterned after the Rehabilitation Act of 1973, which affords similar protection for employees of governmental agencies which receive federal funds. Among other things, the ADA prohibits all state government agencies from discriminating against people with disabilities and from excluding participation in or denying benefits of programs, services, or activities to people with disabilities. It also prohibits governmental agencies from discriminating based on disability in all aspects of employment. All public sector programs, services, and activities must now be accessible to and usable by people with disabilities. In effect, what previously applied only to federally-funded programs now applies to all state agencies, departments, commissions, and colleges.

Public agencies must complete a transition plan for the removal of structural barriers necessary to achieve accessibility. Moreover, by January 26, 1993, all public agencies were required to complete a comprehensive self-evaluation plan to identify and correct policies and practices that are inconsistent with the ADA. Mangels stated that the ADA requires that OMBC's offices—as well as meeting locations—be wheelchair accessible; the Act may also have such far-reaching consequences as requiring the creation of a Braille examination for osteopaths.

Also at its December meeting, OMBC adopted a resolution extending its contract with Occupational Health Services, Inc., for the purpose of administering the Board's Diversion Program for substance-abusing osteopaths during fiscal year 1992–93.

■ FUTURE MEETINGS

May 8 in Orange County (tentative).

PUBLIC UTILITIES COMMISSION

Executive Director:
Neal J. Shulman
President: Daniel Wm. Fessler
(415) 703-1487

The California Public Utilities Commission (PUC) was created in 1911 to regulate privately-owned utilities and ensure reasonable rates and service for the public. Today, under the Public Utilities Act of 1951, Public Utilities Code section 201 *et seq.*, the PUC regulates the service and rates of more than 43,000 privately-owned utilities and transportation companies. These include gas, electric, local and long distance telephone, radio-telephone, water, steam heat utilities and sewer companies; railroads, buses, trucks, and vessels transporting freight or passengers; and wharfingers, carloaders, and pipeline operators. The Commission does not regulate city- or district-owned utilities or mutual water companies.

It is the duty of the Commission to see that the public receives adequate service at rates which are fair and reasonable, both to customers and the utilities. Overseeing this effort are five commissioners appointed by the Governor with Senate approval. The commissioners serve staggered six-year terms. The PUC's regulations are codified in Chapter 1, Title 20 of the California Code of Regulations (CCR).

The PUC consists of several organizational units with specialized roles and responsibilities. A few of the central divisions are: the Advisory and Compliance Division, which implements the Commission's decisions, monitors compliance with the Commission's orders, and advises the PUC on utility matters; the Division of Ratepayer Advocates (DRA), charged with representing the long-term interests of all utility ratepayers; and the Division of Strategic Planning, which examines changes in the regulatory environment and helps the Commission plan future policy. In February 1989, the Commission created a new unified Safety Division. This division consolidated all of the safety functions previously handled in other divisions and put them under one umbrella. The Safety Division is concerned with the safety of the utilities, railway transports, and intrastate railway systems.

At this writing, the PUC consists of only three Commissioners. Governor Wilson has not yet appointed a replacement for Mitchell Wilk, who resigned in October 1991. Additionally, the term of Commissioner John Ohanian expired on December 31, 1992 (*see infra*).

MAJOR PROJECTS

PUC Modifies Caller ID Decision. On November 23, the PUC partially modified its June 17 Caller ID telephone service decision, and granted a limited rehearing on one issue. However, the Commission's November 23 ruling preserves the essence of its original decision: Companies may offer the service only if they also offer ratepayers several free options to block display of their phone numbers, and only if they pay for a PUC-approved consumer education program to inform customers about the service.

In its original June 17 decision, the PUC approved the controversial Caller ID and five other proposed "CLASS" services sought to be offered by Pacific Bell, GTE California, and Continental Telephone on a two-year pilot basis. To enable consumers to protect their privacy by blocking disclosure of their telephone numbers, the Commission ordered the companies to offer three free blocking options: per-call blocking, per-line blocking, and per-line blocking with per-call enabling. Where customers fail to choose a blocking option, the Commission required the companies to provide customers who have unlisted numbers with per-line blocking; other customers would be given per-call blocking. The PUC also ordered the telephone companies to establish an extensive customer notification and education program which must be approved by the Commission, and without which the services may not be offered. *[12:4 CRLR 30, 225–26]*

The June decision identified four CLASS services—Caller ID, Call Block, Call Return, and Call Trace—as privacy-related, because the calling party's number is revealed to the called party. In its November 23 decision, the PUC determined that Call Trace is not a privacy-related CLASS service because the calling party's number is revealed only to law enforcement agencies. Thus, the Commission ruled that utilities may offer Call Trace with a five-day notice to the PUC; they must also notify customers about the service by bill insert. The PUC also stated that if Call Block and Call Return can be offered without revealing the calling party's number to the called party, these services would also not be considered privacy-related or subject to the customer notification and education requirement. The companies could then offer these services with only a five-day notice to the PUC.

The November decision also modifies the customer education plan the utilities must submit to the PUC. Under the new ruling, phone companies must educate customers only in the geographical areas where Caller ID will be offered, and notify all of their customers that Caller ID will be offered in certain areas of the state.

The June decision ordered phone companies to offer per-line blocking with per-call enabling, and to have customers use different codes for per-call blocking and per-call enabling. The November decision granted a limited rehearing on the technical feasibility of different activation codes for per-call blocking and per-call enabling. While affirming its decision that per-line blocking with per-call enabling is technologically feasible, the Commission ordered a limited rehearing on the companies' claim that two different codes may not be possible. The limited rehearing will allow all parties to introduce limited evidence. In addition, the PUC will examine other technologies, including a tone or voice message which would indicate whether a line is blocked or unblocked.

The modification comes in response to requests by Pacific Bell and Toward Utility Rate Normalization (TURN) asking the PUC to change its blocking requirements and consumer education plan. Pacific Bell claimed the June 17 requirements were too restrictive, while TURN claimed they were not protective enough of consumers' privacy rights. TURN asked the PUC to require companies offering the service to assign all customers automatic per-line blocking, with the ability to unblock their line on a per-call basis, unless the customer chooses otherwise.

In its November decision, the PUC affirmed its earlier blocking requirements. Utilities deciding to offer Caller ID must offer per-call and per-line blocking options at no charge. Customers who do not choose a blocking option will be given one by their phone company depending on the type of service they have. Customers who pay for unlisted or unpublished telephone numbers and who do not choose a blocking option will be given per-line blocking; other customers who do not choose a blocking option will be given per-call blocking.

On December 22, Pacific Bell announced that it will not offer Caller ID because of the strict privacy protections required by the Commission. Because 40% of all households in the state maintain unlisted phone numbers, and because PacBell is required to provide these households with per-line blocking (unless an individual customer chooses otherwise), the service lost its potential for profitability. PacBell complained that no other state offering the service has required phone companies to offer line blocking automatically. The decision mirrors similar moves by GTE California and Contel, both of which abandoned plans to offer the service shortly after the original June decision.

A PacBell spokesperson admitted that the company's decision is not necessarily final. Last year, Congress considered legislation that would have established less restrictive privacy standards for Caller ID services and might have preempted California's regulations. It has also been the experience in some other states that when the local phone company refused to offer Caller ID, regulators later modified their position.

PUC Hears Testimony in Toll Call Competition Hearing. On December 1, the Commission heard from several groups at a special hearing on the issue whether to allow competition between local and long distance phone companies in providing short distance toll call service, and how to restructure the overall rate design of local phone companies so as not to disproportionately impact ratepayers who do not benefit from the new competitive scheme. *[12:4 CRLR 226; 12:2&3 CRLR 258–59; 12:1 CRLR 185]*

The service in question covers calls ranging from 13–70 miles within each of the state's ten service areas. Currently, local phone companies such as Pacific Bell have a monopoly on connecting these so-called "intraLATA" calls, which reach outside the local calling zones but stay within the local phone company's service area. Under the proposed scheme, Pacific Bell would compete with AT&T, Sprint, MCI, and other long distance carriers for intraLATA service, while continuing to maintain its monopoly on provision of local service.

Pacific Bell, which annually brings in over $2 billion for providing intraLATA toll call service, has proposed to reduce its toll charges by 30% or more in order to effectively compete with the long distance carriers. However, PacBell says it must increase its basic monthly service fee by 60% (from $8.35 to $13.35) over three years, to make up for lost profits on toll calls. Under the purportedly revenue-neutral proposal, installation charges would also jump from $34.75 to $54.50 for most customers. Company officials contend toll calls have subsidized basic service costs for years, and basic service fees must be raised to reflect their true costs and to compensate for falling toll charges.

Consumer advocates strongly disagree with Pacific Bell's contentions. TURN has recommended that basic service should remain at $8.35 per month, and the phone company should be allowed price flexibility on toll calls. TURN attorney Tom Long argued that 60% of PacBell's customers would suffer higher phone bills under the utility's plan.

Much of the testimony at the hearing centered on the effects of the proposed plan on individual phone bills. While PacBell claimed that most customers would suffer overall increases under 10%, TURN argued that many low-income and elderly ratepayers cannot afford the rate increase and would get nothing in return, as they make relatively few toll calls. Pacific Bell estimates a 56-cent reduction in the average residential customer's bill under the proposal, and an average of $1.51 in reduced charges for customers who make a lot of toll calls. TURN attacked these figures, arguing that PacBell is overestimating the amount of savings from toll calls; TURN also pointed out that PacBell's figures project an average 51-cent monthly increase in the telephone bills of elderly subscribers. Finally, TURN contended that Pacific Bell's toll rates are set arbitrarily, with little regard to actual costs.

Pacific Bell Ordered to Explain $35.7 Million Overcharge. In an October 15 audit report, the Commission's Advisory and Compliance Division (CACD) said that Pacific Bell overcharged the Universal Lifeline Telephone Service (ULTS) Fund for reimbursements in the sum of $35,686,022. On October 26, Pacific Bell stated that it refuses to pay the requested amount. On November 23, the PUC issued D.92-11-063, which orders Pacific Bell to file an explanation as to why it refuses to reimburse the fund by February 1.

The ULTS program subsidizes basic telephone service for low-income California residents who may not otherwise be able to afford it. Eligibility for the program, based on a maximum household income, qualifies customers for half-price service. Telephone utilities may claim the amount of lost revenue and incremental costs incurred as a result of the program and be reimbursed through the ULTS Fund. The ULTS program is funded by a 4% surcharge on all intrastate toll calls, whether carried by a local exchange carrier (LEC) or a long distance carrier.

CACD'S audit encompassed the period from 1984–89, and showed that Pacific Bell claimed improper reimbursements for lost revenue and administrative costs from the ULTS Fund. According to the audit, over $26 million of the overcharges stem from double-billing for Pacific Bell's cost of handling orders from the Lifeline customers. The auditors contend that these administrative costs are already recovered through PacBell's revenue requirements. According to the audit report, other costs were disallowed because Pacific Bell provided insufficient documentation: "PacBell has not fulfilled its obligation of maintaining proper records and providing evidence that supports its claim. Regulations require utilities to maintain proper records. Audit trails should not have to be reconstructed."

Michael Miller, Pacific Bell's vice president for regulatory affairs, called the audit allegations "ridiculous." He responded to the report by charging that the same PUC division which administered the audit regularly approved Pacific Bell's monthly bills to the Lifeline Fund every three months since 1984.

The audit report comes at a time when the Lifeline Fund is at a dangerously low level, according to Fund administrator Terry Wilson-Gray. Phone companies receive more than $19 million to cover Lifeline costs. In recent months, however, the customer surcharge has collected only $16 million, leaving a shortfall of over $3 million. According to Wilson-Gray, the recent economic hardship experienced by state residents has significantly diminished the Lifeline Fund reserves, which have dropped from $95 million to $41 million in the past year.

The possibility of opening intrastate toll call service currently offered by LECs to competition from long distance carriers (*see supra*) may also adversely affect the Fund. According to a June 1992 report on ULTS issues released by CACD, "there is the likelihood that intraLATA toll rates will decrease and basic rates will increase. The former will lower the income from the surcharge while the latter will increase the expenses."

ULTS Trust Administrative Committee Chair Ken McEldowney, in a reported ex parte communication letter to Commission President Daniel Wm. Fessler, detailed the problems surrounding the declining ULTS fund. According to the Administrative Committee, the fund balance declined $49 million during the 1991–92 fiscal year, and it dropped another $10 million by October 1992. The Committee urged Fessler to consider raising the surcharge to 4.5% or 5% in order to stem the decline.

CACD's June 29 report addressed the need to explore other avenues to keep the ULTS program solvent. Possible solutions include "expanding the base of the surcharge to include all end users of telecommunications services. This expanded base potentially includes cellular users, radiotelephone utility users, and users of LEC and interexchange (long distance) carrier services other than toll." TURN Executive Director Audrie Krause noted that the fund would be significantly replenished if Pacific Bell repays the $35.7 million in alleged overcharges.

Pacific Bell and GTEC Rate Changes. On December 16, the Commission ordered Pacific Bell to reduce its rates by $11.8 million, a 0.19% reduction, and permitted GTE California to increase its rates by $11 million, or 0.51%, by January 1. In effect, a typical monthly bill of $24 for a Pacific Bell customer will drop five cents, while a typical monthly bill of $33 for a GTEC customer will increase twenty cents.

The rate changes are the result of the Commission's "New Regulatory Framework" established three years ago for Pacific Bell and GTEC. *[12:4 CRLR 226; 10:1 CRLR 151]* The changes reflect the annual revenue needed to operate for 1993 determined by using a formula based on the gross national product price index, reduced by a productivity requirement of 4.5%.

Most of Pacific Bell's revenue requirement reduction reflects a 1993 price cap index factor of -1.4% applied to a total billing base of $6.4 billion. The remainder of the revenue adjustment reflects accounting and tax changes, including changes to rules and charges for inside wire services, changes in Federal Communications Commission regulations, and increased costs for employee post-retirement benefits other than pensions. Most of GTEC's revenue requirement increase reflects increased costs for employee post-retirement benefits other than pensions. It also includes the 1993 price cap index factor of -1.4% applied to a billing base of $1.8 billion.

PUC Regulation of Cellular Rates. On October 6, the PUC issued a ruling that significantly regulates the cellular telecommunications industry. Although unpublicized by the Commission, the unprecedented ruling cuts the cellular rates enjoyed by network operators.

The ruling orders local cellular network operators to "unbundle" or break down the price they charge resellers, the companies that buy time on the cellular network at wholesale prices and then resell to retail customers. Unbundling allows resellers to selectively buy the services they need instead of buying the full range of services offered by the network operators, which often includes unneeded options. *[12:4 CRLR 227]* Resellers are companies that buy access to a cellular network at wholesale prices and resell the access to retail consumers. The local cellular networks own and operate the switching equipment that connects the regular phone system with the radio network used for portable phones. Unbundling allows resellers to connect their own switching equipment to the cellular network. As resellers begin using their own switching equipment, monthly rates could fall drastically as early as 1993.

The ruling also sets a 14.75% profit margin on the sale of the various unbundled services to resellers. The profit margin on retail remains unregulated. According to David Nelson, president of California Cellular Resellers Association, some cellular firms are currently making 50% profits. "Now there's room for a lot of competition, like in long distance," said Nelson.

To maintain some level of competition, federal law permits two network operators per geographical region. However, the usage fees charged by the two operators in each region are usually similar, and remain essentially unchanged from the fees charged when the service began in 1984. These unchanged fees contrast with the prices for cellular telephones, which have dropped as much as 90% over the past eight years. Further, operators such as PacTel Cellular control both retail and wholesale portions of the cellular market, which leads many to claim that their rates prevent fair competition.

PUC President Fessler stated that the ruling is the only way the Commission could lower soaring wholesale costs. "Prices were supposed to drop, because there were two providers of the service in every area. But they haven't. We believe more competition would be better for everyone," agreed Commissioner John Ohanian.

The October decision reflects the mounting criticism of the cellular communications industry, and may signal more regulation on the horizon. Commission staff has been working on drafting an order instituting an investigation of the cellular industry, which would initiate months of hearings, written briefs, and deliberation.

PacTel Cellular responded by filing a request asking the Commission to reconsider its ruling. PacTel contends that the decision is flawed, and would eventually overload the traffic volumes that would be generated on the cellular network by the lower prices.

PUC Resolves Phase One of SDG&E 1993 General Rate Case. After months of laborious negotiations among representatives of San Diego Gas and Electric Company (SDG&E), the City of San Diego, the Utility Consumers' Action Network, and the Commission's Division of Ratepayer Advocates, the PUC finally approved SDG&E's revenue requirement in Phase One of the utility's General Rate Case on December 3. The Commission's decision essentially adopts a settlement reached by the parties and reluctantly approved by PUC Administrative Law Judge (ALJ) Steven Weissman. Effective January 1, SDG&E's rate base is $956 million for electricity, $179 million for gas, and $888,000 for steam. This amounts to a total increase of approximately $40 million, far short of SDG&E's original rate increase request of $145 million. The revenue requirement increase translates into an additional 53 cents per month for the average residential electric customer, and an increase of 68 cents per month on the average gas bill. *[12:4 CRLR 228; 12:2&3 CRLR 40, 261]*

Factors included in the final numerical figures include an additional $5 million to offset refueling costs at the San Onofre Nuclear Generating Station, $2 million for employee post-retirement medical, dental, and insurance benefits, and a $32 million reduction reflecting the reduced cost of borrowing money.

The December 3 decision capped an unusual proceeding in which ALJ Weissman closely scrutinized the company's figures and expressed deep dissatisfaction with the method used by the utility to estimate expenses for the coming year. In his October 26 proposed decision, ALJ Weissman adopted the settlement agreed to by the parties, but called for a detailed review of SDG&E's expenses at the end of 1993 to ensure that actual costs compare to those projected in the rate increase request. Weissman's recommendation sparked intense protest from SDG&E, whose spokespeople maintained that the decision—if approved by the PUC—could cost the utility up to $189 million in potential refunds to consumers if company expenses do not accurately reflect estimates. Unaccustomed to such close scrutiny by its regulator, SDG&E sent top management officials scurrying to San Francisco to urge the Commission to reject the recommendation, on grounds that the additional review is "governmental micromanagement" that would cost ratepayers money instead of saving it. In its December 3 decision, the PUC rejected the recommendation but stated that it would adopt guidelines for future settlement negotiations. "We are insistent that the settlements presented to us contain sufficient information to allow the Commission to discharge its regulatory responsibilities," stated PUC President Fessler.

Phase Two of the General Rate Case will review the utility's overall rate design for proper allocation among customer groups. That phase, expected to be completed during the summer of 1993, will review the issue whether to establish a residential customer charge to recover service charges or to absorb the service charges in energy use rates.

SDG&E Seeks Performance-Based Rates. In late October, SDG&E filed an historic request with the PUC, asking the regulator to set rates based on the company's performance in southwestern energy markets.

Traditionally, utilities have operated as monopolies and their rates of return are set based on prudent investments in power-generating plants and power lines and the actual costs of providing service. Recognizing growing competition in the energy utility industry, the SDG&E request moves toward a "performance-based incentives" rate structure, which would allow the company to earn greater profits if it operates more efficiently. The concept is similar to the one which swept the telecommunications industry after deregulation opened parts of that business to fierce competition. *[10:1 CRLR 151]*

Under SDG&E's three-part proposal, customers and shareholders would benefit equally if the utility is able to purchase natural gas or electricity at below-market prices, reduce costs to generate power, or buy low-cost, environmentally sensitive powerplants. If approved by the PUC, the new system would set rates based on the fluctuating energy market price, and would thus create an incentive for utility officials to beat the price. Currently, utility rates are based only on dollar-for-dollar costs, regardless of the market rate for energy.

The utility has been discussing the new rate structure with the PUC's Division of Ratepayer Advocates for the last eighteen months, hopes for a decision on the proposal by mid-1993.

PUC Slashes Profit Margins for State Energy Utilities. On November 23, the PUC adopted the proposed decision of ALJ Ann Watson to reduce the allowable rates of return, or profit margin, of the state's major energy utilities. The decision is expected to benefit ratepayers by partially offsetting other anticipated rate increases next year but disappointed the utilities and their credit-rating agencies, which influence the interest rates they pay on their debts. Actual rate impacts of the reduction in profit margin will not be known until the PUC decides several pending rate cases, but the move caused the credit rating of Southern California Edison to drop from AA to A+, which may mean the utility will have to pay higher interest rates to acquire capital.

The Commission lowered the rate of return of the state's major utilities as follows: Southern California Edison—11.8%; SDG&E—11.85%; Pacific Gas and Electric—11.90%; Southern California Gas—11.90%; Sierra Pacific—11.95%; and Southwest Gas—11.95%.

SoCal Gas Seeks $45 Million Rate Increase for 1994. As part of its 1994 General Rate Case, Southern California Gas Company (SoCal Gas) filed a request with the PUC seeking approval of a $44.9 million rate increase. Combined with a $117 million increase planned to go into effect in 1993, the increase would raise revenues by a total of $162.4 million. Claiming that the $45 million request "is the lowest increase sought in a general rate case in twenty years," SoCal Gas president Warren Mitchell defended his company's revenue request as an adequate reflection of the cost of producing and distributing energy.

The rate increase request, filed November 16, includes proposals to restructure baseline allotments, eliminate rate design policies which are unfair to non-residential customers, provide lower baseline allotments to customers residing in dwellings that exceed the state's Title 24 efficiency standards, and increase service installation charges from $5 to $35 to better reflect costs. At this writing, evidentiary hearings are set to commence on this proposal shortly.

PUC Orders Cities of Oakland and Berkeley to Share Costs of Undergrounding After Oakland Fire. On December 3, the PUC authorized PG&E to underground electric facilities replacing the overhead facilities destroyed in Oakland and Berkeley by the devastating October 1991 fire. The costs of the undergrounding will be shared by PG&E ratepayers and the cities of Oakland and Berkeley.

Immediately after the fire, PG&E moved to restore service in Oakland and Berkeley as soon as possible by installing new overhead electrical facilities. In an effort to reduce future fire risk in the area, however, the City of Oakland subsequently adopted a new local ordinance requiring new service lines to be underground. The new overhead lines must be dismantled and the electric lines buried underground, at an estimated cost of $25.1 million.

In its December 3 decision, the PUC rejected PG&E's request to spread the cost to ratepayers statewide, but did agree that because of the size of the area affected, contributions should come from other sources. The Commission ordered PG&E to cover $12.8 million of the undergrounding costs and ordered the cities of Oakland and Berkeley to share the remaining burden of $12.3 million. Anticipating potential uncertainty as to future application of this decision, the Commission quickly issued a press release stating that this decision seeks to respond only to a "unique set of circumstances," and in no way is to be construed as precedent.

PUC ALJ Holds Evidentiary Hearings on Train Derailments. On November 5–13 and November 16–19, PUC ALJ Robert L. Ramsey held evidentiary hearings on two recent Southern Pacific train derailments—the July 14, 1991 Dunsmuir derailment, in which almost 20,000 gallons of metam sodium were dumped into the Sacramento River, and the July 28, 1991 derailment near Seacliff, which spilled 440 gallons of poisonous hydrazine onto Highway 101, respectively. The ALJ must determine whether Southern Pacific's conduct in either of the two derailments violated California statutory or regulatory law. *[12:2&3 CRLR 261–62; 11:4 CRLR 204–05]*

On December 17, the federal government filed suit against the railroad in federal district court in Sacramento, seeking over $1 million in civil penalties for violating the Clean Water Act and compensation for damage caused as a result of the Dunsmuir spill. The State of California has already filed suit against Southern Pacific over the Dunsmuir spill *[12:4 CRLR 188]*, and the railroad has reached settlement agreements with the two counties most affected by the spill. Southern Pacific has agreed to pay a total of $526,000 to Siskiyou and Shasta counties to settle potential civil and criminal litigation arising out of the Dunsmuir incident.

On December 30, the National Transportation Safety Board released the results of its investigation of the Dunsmuir derailment. NTSB agreed with the conclusions of the PUC's Safety Division that, in addition to mechanical, electrical, and engine problems, one cause of the accident was the railroad's poor arrangement of freight cars, with heavily loaded cars at the end of the 97-car train. *[12:2&3 CRLR 261–62]* NTSB stated that the probable cause of the wreck was "excessive draft forces at the head of the train, resulting from a combination of poor train handling, poor train makeup and mechanical and electrical defects that created power surges and wheel slip on two of the four locomotive units."

General Freight Proceeding Ongoing. In June 1992, the PUC commenced a rulemaking proceeding to consider proposed changes to the current general freight regulatory program, implemented in part by Commission General Order 147-C; a number of carriers have requested departures from several rules in GO 147-C. *[12:4 CRLR 229; 11:3 CRLR 192; 10:4 CRLR 180–81]* At this writing, the rulemaking proceeding is ongoing.

In conjunction with this proceeding, the PUC is also considering a petition filed by the California Trucking Association (CTA) and the California Coalition for Trucking Deregulation (CCTD), which seeks to amend the PUC's rule prohibiting common carriers from increasing their rates more than 10% over a twelve-month period. The petition comes in response to the U.S. Supreme Court's June 1992 refusal to review the U.S. Ninth Circuit Court of Appeals' decision in *Federal Express Corporation v. Public Utilities Commission of California, et al.*, 936 F.2d 1075 (1991), in which the appellate court found that, as applied to Federal Express' trucking operations, the PUC's trucking regulations are preempted by the federal Airline Deregulation Act of 1978. CTA/CCTD allege that Federal Express "transports many millions of dollars' worth of freight in trucks in California, just as do all of their intrastate competitors. However, Federal alone need not file any tariff or contract rates with the Commission. Federal Express may now set or amend any rate on any traffic as it sees fit, without the Com-mission's knowledge or approval. The Com-mission's annual limit on common carrier rates is a vestige of economic regulation which creates a radically uneven 'playing field' in California's general freight industry."

PUC to Implement New Intervenor Compensation Statute. On December 16, PUC ALJ Brian T. Cragg announced a rulemaking proceeding to adopt a new PUC intervenor compensation scheme conforming to AB 1975 (Moore) (Chapter 942, Statutes of 1992). "Intervenor compensation" is a method of encouraging ratepayer and other underrepresented interests to participate in PUC ratesetting and other proceedings; under the previous scheme, a ratepayer group which intervened in a PUC proceeding, made a substantial contribution which was adopted by the Commission, and for which participation or intervention without an award of fees would work a significant financial hardship, was eligible to seek reimbursement of its attorneys' fees and costs from the utility under scrutiny in the proceeding.

In recent years, however, the PUC's administration of its intervenor compensation system has come under attack by consumer groups and by the state Auditor General, primarily for the years-long delay between the point at which services are rendered and the time the Commission decides an intervenor deserves compensation. Other complaints centered on the failure of the Commission to award attorneys' fees at prevailing market rates, its habit of slashing reimbursement requests based on the number of issues in the entire proceeding versus the number of issues on which the intervenor prevailed, and its failure to adopt rules providing for any advance or interim funding during excessively lengthy proceedings. *[12:2&3 CRLR 44–45, 262–63; 11:3 CRLR 5–7; 10:1 CRLR 1]*

Effective January 1, AB 1975 (Moore) revamps Public Utilities Code sections 1801–08, the statutes authorizing the PUC to award intervenor compensation to deserving participants. Among other things, AB 1975 provides that the Commission shall award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding to any customer who makes a substantial contribution to the adoption, in whole or in part, of a PUC order or decision, and for whom participation or intervention without an award of fees or costs imposes a significant financial hardship. AB 1975 contains legislative intent language instructing the Commission to streamline the process for determining eligibility, make awards within a reasonable period after the intervenor has made a substantial contribution, and administer its intervenor compensation system "in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process."

Under AB 1975, an intervenor who intends to seek an award must file a notice of intent to claim compensation within 30 days after the prehearing conference; the ALJ presiding over the proceeding must issue a preliminary ruling addressing whether the intervenor will be eligible for compensation. Within 60 days after the issuance of a final order or ruling by the PUC in the hearing or proceeding, the intervenor may file a request for an award. The Commission may audit the records and books of the intervenor to the extent necessary to verify the basis for the award. Within 75 days after the filing of the request for compensation, or within 50 days after the filing of an audit report, the Commission must issue a decision determining whether the intervenor has made a substantial contribution to the final order to decision in the hearing or proceeding. Amended section 1806 requires the Commission, in computing intervenor compensation, to consider the market rates paid to persons of comparable training and experience who offer similar services.

Because of the specificity of AB 1975, the new regulation noticed on December 16 would simply state: "Compensation for participation or intervention in Commission proceedings is governed by the provisions of Division 1, Part 1, Chapter 9, Article 5 of the Public Utilities Code." This rule would replace three sets of intervenor compensation rules which have been developed by the Commission over the years (Articles 18.5, 18.6, and 18.7, Title 20 of the CCR).

ALJ Cragg called for public comments on the proposed rulemaking by January 16.

PUC Seeks Public Comment on Interim Rules on Reporting of Utility-Affiliate Transactions. In August 1992, the PUC issued interim rules requiring utilities to report annually on business dealings with their affiliates, subsidiaries, and parent companies. *[12:4 CRLR 229]* In the same order, the Commission instituted a rulemaking proceeding in order to codify the rules into a Commission General Order. At this writing, the PUC is accepting public comments on the interim rules until March 31.

Ohanian Leaves Commission and Takes New PUC Post. Commissioner John Ohanian's six-year term on the PUC expired on December 31. Because he has worked for the state for a total of 27 years, including 14 years at the PUC prior to his appointment as a Commissioner by former Governor Deukmejian, Ohanian may either retire at about $35,000 per year or exercise his "return rights," meaning he may choose to return to his $40,000-per-year job as a PUC analyst.

However, the Commission decided to create a new job for Ohanian. Starting January 1, Ohanian became the Commission's new $65,100-per-year "Special Representative" and serves—according to his new job description—as "the PUC's liaison with appropriate legislative bodies, government and local agencies on Transportation, Safety and Energy Utility related matters." Although the job description calls for a legislative representative, Ohanian's position is based in his home town of Fresno.

Specifically, Ohanian's new job description requires him to work with the PUC's staff outreach officer in the Fresno area to analyze the ways in which the PUC might provide better and more effective outreach to ethnic communities; review and analyze the various reports required of all types of carriers subject to PUC jurisdiction and provide independent written recommendations as to the need and/or desirability of each such report; review and analyze the Commission's General Freight decision which gives common carriers greater pricing flexibility, and provide an independent in-depth report on the impact of that decision; and serve as the Commission President's liaison with investor-owned water utilities and the Seismic Safety Commission.

Several consumer groups questioned the PUC's creation of the new position, especially in light of the state's fiscal crisis; they also challenged the usefulness of a legislative liaison based in Fresno, particularly when the PUC has a full-time staff based in Sacramento to deal with the legislature and other state agencies. However, PUC Executive Director Neal Shulman noted that the state would have to pay Ohanian anyway, and that creation of the new position takes advantage of the special experience Ohanian gained as a PUC Commissioner.

LEGISLATION

AB 4 (Areias). Existing law, with specified exceptions, directs the PUC to require any call identification service offered by a telephone corporation, or by any other person or corporation that makes use of the facilities of a telephone corporation, to allow the caller, at no charge, to withhold, on an individual basis, the display of the caller's telephone number from the telephone instrument of the individual receiving the call. As introduced December 7, this bill would permit the withholding of the display of the caller's telephone number to be done on a per call basis, or a per line basis, at the customer's option and would prohibit a telephone call identification service from displaying a caller's telephone number without the affirmative written consent of the caller. *[A. U&C]*

FUTURE MEETINGS

The full Commission usually meets every other Wednesday in San Francisco.

STATE BAR OF CALIFORNIA

President: Harvey I. Saferstein
Executive Officer:
Herbert Rosenthal
(415) 561-8200 and
(213) 580-5000
TDD for Hearing- and Speech-Impaired:
(415) 561-8231 and
(213) 580-5566
Toll-Free Complaint Hotline:
1-800-843-9053

The State Bar of California was created by legislative act in 1927 and codified in the California Constitution at Article VI, section 9. The State Bar was established as a public corporation within the judicial branch of government, and membership is a requirement for all attorneys practicing law in California. Today, the State Bar has over 128,000 members, which equals approximately 17% of the nation's population of lawyers.

The State Bar Act, Business and Professions Code section 6000 *et seq.*, designates a Board of Governors to run the State Bar. The Board President is elected by the Board of Governors at its June meeting and serves a one-year term beginning in September. Only governors who have served on the Board for three years are eligible to run for President.

The Board consists of 23 members—seventeen licensed attorneys and six nonlawyer public members. Of the attorneys, sixteen of them—including the President—are elected to the Board by lawyers in nine geographic districts. A representative of the California Young Lawyers Association (CYLA), appointed by that organization's Board of Directors, also sits on the Board. The six public members are variously selected by the Governor, Assembly Speaker, and Senate Rules Committee, and confirmed by the state Senate. Each Board member serves a three-year term, except for the CYLA representative (who serves for one year) and the Board President (who serves a fourth year when elected to the presidency). The terms are staggered to provide for the selection of five attorneys and two public members each year.

The State Bar includes twenty standing committees; fourteen special committees, addressing specific issues; sixteen sections covering fourteen substantive areas of law; Bar service programs; and the Conference of Delegates, which gives a representative voice to 291 local, ethnic, and specialty bar associations statewide.

The State Bar and its subdivisions perform a myriad of functions which fall into six major categories: (1) testing State Bar applicants and accrediting law schools; (2) enforcing the State Bar Act and the Bar's Rules of Professional Conduct, which are codified at section 6076 of the Business and Professions Code, and promoting competence-based education; (3) ensuring the delivery of and access to legal services; (4) educating the public; (5) improving the administration of justice; and (6) providing member services.

Governor Wilson recently appointed William R. Hayes of San Diego to serve as a public member on the Board of Governors. Hayes replaces public member Bruce Nestande of Costa Mesa, who resigned from the Board in mid-1992. There are presently two vacancies among the six public member slots. Governor Wilson has one additional public member to appoint, and Senate President pro Tem David Roberti is responsible for filling the other vacancy.

MAJOR PROJECTS

Bar to Focus on Litigation Reform During 1993. Board of Governors President Harvey Saferstein recently announced that one of the Bar's top priorities during 1993 is litigation reform. Citing the heavy burden on California courts, Saferstein listed various proposals and programs to avoid litigation.

• ***ADR Legislation.*** The Bar's Courts and Legislation Committee is working with representatives from the Los Angeles County Bar Association, the Judicial Council, the California Judges Association, and the California Trial Lawyers Association in drafting new legislation to encourage alternative dispute resolution (ADR). The Bar's previous legislative effort on this issue was rejected by the legislature in May 1992, partly due to poor lobbying and collaboration with other "players" on the issue by the Bar. *[12:2&3 CRLR 266–67]*

The Bar also intends to implement ADR in its own discipline system to reduce caseloads and workloads. The Board's Committee on Discipline and Client Assistance is working with Bar Chief Trial Counsel Robert Heflin on formulating a proposal to introduce ADR into the Bar's discipline system.

• ***Model Stipulation Program.*** The Courts and Legislation Committee is preparing model stipulations which the Bar will make available both to lawyers and clients. According to Saferstein, the Model Stipulation Program "would publish stipulations litigants could use to consent to voluntary settlement conferences, arbitration, mediation, limitations on discovery, bifurcation of issues, and other time-saving techniques."

• ***Early Settlement Program.*** Saferstein would also like to set up "a permanent, statewide network of volunteer lawyers to help the courts settle civil cases filed in our state courts." As proposed by Saferstein, the Early Settlement Program would bring together lawyers and litigants early in the litigation process, ensuring that all settlement possibilities are explored. According to Saferstein, "if every one of our active 110,000 lawyers across the state were to dedicate one, two, or three days a year to help courts settle cases, we could cut down the backlog to a manageable size."

Unified Bar Study. Following Governor Wilson's September 30 veto of AB 687 (Brown), which would have required the Board of Governors and specified legislators to appoint a 21-member task force to study whether the "integrated" State Bar should be abolished, the Board of Governors discussed whether to undertake the study on its own. An earlier version of AB 687 would have abolished the State Bar and delegated the state's regulation of attorneys to a new Attorneys' Board of California within the Depart-